

CALIFORNIA COASTAL COMMISSION

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**F 8a****STAFF RECOMMENDATION****ON CONSISTENCY DETERMINATION**

Consistency Determination No.	CD-077-06
Staff:	LJS-SF
File Date:	10/3/2006
60 th Day:	12/2/2006
75 th Day:	12/17/2006
Commission Meeting:	12/15/2006

FEDERAL AGENCY: **Bureau of Indian Affairs**

**PROJECT
LOCATION:**

Southwest intersection of Highway 101 and Big Lagoon Park Road, south of Big Lagoon, Humboldt County (APN 517-281-004)(Exhibits 1 and 2)

**PROJECT
DESCRIPTION:**

Placement of five acre parcel into Federal trust for use by Big Lagoon Rancheria and development of three single family residences on the parcel

**SUBSTANTIVE
FILE DOCUMENTS:**

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EXECUTIVE SUMMARY

The Bureau of Indian Affairs (BIA) has submitted a consistency determination for the transfer of a five acre parcel currently held in simple fee status by Big Lagoon Rancheria into federal trust status by the United States on behalf of the Big Lagoon Rancheria, and for the subsequent construction of three single family residences on the parcel. The parcel (APN 517-281-004) is located within the coastal zone at the southwest corner of the intersection of Highway 101 and

Big Lagoon Park Road, approximately 25 miles north of Arcata in Humboldt County. The Big Lagoon Rancheria is presently comprised of 20 acres of trust property (two contiguous parcels on the southern shore of Big Lagoon), a four-acre simple fee parcel (located on the southern shore of Big Lagoon one-eighth mile northwest of the trust property), and the subject five acre simple fee parcel (located one-half mile southwest of the trust property). On the 20-acre site are eight permanent homes, one community water treatment building and storage tank, one tribal cemetery, additional planned water system area, and Tribal-designated recreational/cultural/economic development areas.

The BIA states that there is a recognized need within the community for affordable housing. Under the proposed development, the parcel would be cleared and vegetation removed as necessary to allow for construction of an access driveway, utility connections, a wastewater leach field, and three, two-story single family residences, each of which would be approximately 2,000 square feet in size. The BIA states that the proposed development is generally consistent with the pattern of existing homes and housing developments in the Big Lagoon area, but also notes that the proposed development would not be fully consistent with the current Humboldt County rural residential zoning designation for the site (one residence/five acres). Should the subject parcel be placed into federal trust status for Big Lagoon Rancheria, the parcel would no longer be subject to this zoning designation or to other state and local government land use and development regulatory controls.

While no legal subdivision is proposed, should three homes be constructed on the subject five-acre parcel after transfer to federal trust status, the equivalent average parcel size allocated to each residential structure would be 1.67 acres. This effective parcel size is significantly smaller than existing parcel sizes in the general project area. This proposed intensity of development on the subject parcel would be inconsistent with the existing level of development intensity in the surrounding area. The proposed placement of the subject parcel into federal trust status to allow development of three single family residences on the five-acre parcel is not consistent with the concentration of development and cumulative impact policy of Section 30250(a) of the Coastal Act.

All or portions of Big Lagoon County Park, Humboldt Lagoons State Park, Harry Merlo State Recreation Area, and Patrick's Point State Park are located in the Big Lagoon area. Overnight camping, picnicking, sightseeing, hiking, boating, wildlife viewing, fishing, and beachcombing are popular activities in this area. The proposed development density is out of character with adjacent parcel sizes that support residential development, timber management, and public recreation. The proposed development density is also contrary to the Commission's historic actions in this part of Humboldt County to protect the existing rural nature of the landscape from increased development intensity, the outstanding opportunities for public access and recreation along the Highway 101 corridor and adjacent Pacific shoreline, and the unique character of the Big Lagoon recreation area. The proposed placement of the subject parcel into federal trust status to allow development of three single family residences on the five-acre parcel is not consistent with the development policy of Section 30253 of the Coastal Act.

In order for the proposed trust transfer and residential development to be found consistent with the concentration of development and cumulative impact policies of the Coastal Act, the project would need to be modified as follows:

1. New Residential Development. The Bureau of Indian Affairs will prepare a revised site plan for residential development on APN 517-281-004 that includes only one single family residence and an associated driveway, wastewater leach field, and utility connections. The residence will not exceed 25 feet in height, the no-development zone extending 165 feet from the watercourse at the western end of the parcel will be maintained, vegetation clearing for the development will be minimized, the existing forested strip along Highway 101 will be left undisturbed in order to screen the residence, and construction and post-construction BMPs will be implemented.

2. Agreement for Future Development. The Bureau of Indian Affairs will modify the project to include adoption by Big Lagoon Rancheria, and submittal to the Executive Director for his review and concurrence, Tribal Ordinances or other equivalent mechanisms which: (1) restrict future development on the subject parcel (APN 517-281-004) to one single family residence; (2) include provisions that the ordinances will not be altered without authorization by the Commission; and (3) include a waiver of sovereign immunity.

Absent such modifications, the proposed project is not consistent with the concentration of development and cumulative impact policies of the CCMP (Coastal Act Sections 30250(a) and 30253).

The proposed action would not eliminate any environmentally sensitive habitat and includes avoidance and mitigation measures to ensure that the intermittent watercourse on the parcel is protected from sedimentation damage during and after construction. The project can be developed in a manner which would avoid environmentally sensitive habitat and not adversely affect water quality, and is consistent with the water quality and environmentally sensitive habitat policies of the CCMP (Sections 30231 and 30240 of the Coastal Act). The proposed clearing of vegetation for a driveway, building pads, and wastewater leach field would occur within the center of the parcel, leaving the perimeter vegetation intact as a screen from public roadways. The subject parcel is not visible from other nearby public lands. The proposed project can be developed in a manner which would not adversely affect scenic views from the adjacent section of Highway 101 and is consistent with the scenic and visual resource policy of the CCMP (Section 30251 of the Coastal Act). The project area is within the Yurok Tribe's traditional territory. The subject parcel does not contain significant cultural resources and protections for an unanticipated discovery of such resources would be implemented prior to the start of site construction. The proposed project will not adversely affect cultural resources and is consistent with the cultural resource policy of the CCMP (Section 30244 of the Coastal Act).

STAFF SUMMARY AND RECOMMENDATION

I. STAFF SUMMARY.

A. Project Description. The Bureau of Indian Affairs (BIA) has submitted a consistency determination for the transfer of a five-acre parcel currently held in simple fee status by Big Lagoon Rancheria into federal trust status by the United States on behalf of the Big Lagoon Rancheria, and for the subsequent construction of three single family residences on the parcel. The parcel (APN 517-281-004) is located within the coastal zone at the southwest corner of the intersection of Highway 101 and Big Lagoon Park Road, approximately 25 miles north of Arcata in Humboldt County (**Exhibits 1-6**). Big Lagoon Rancheria is a federally recognized tribe that was established on July 10, 1918, and currently has 18 adult members. Big Lagoon Rancheria lands were obtained in the 1960s, and the Rancheria is now comprised of 20 acres of trust property (two contiguous parcels on the southern shore of Big Lagoon), a four-acre simple fee parcel (located on the southern shore of Big Lagoon one-eighth mile northwest of the trust property), and the subject five acre simple fee parcel (located one-half mile southwest of the trust property). On the 20-acre site are eight permanent homes, one community water treatment building and storage tank, one tribal cemetery, additional planned water system area, and Tribal-designated recreational/cultural/economic development areas. The BIA states in its consistency determination that:

Big Lagoon's ability to maintain the health, safety, and welfare of its people, preserve the history and reclaim its culture, language, and art for future generations is severely hampered by a need for self-sufficiency. The need for and development of three tribal homes on this five acre site will enhance Big Lagoon's ability for self-determination and self-sufficiency . . . There is a recognized need within the community for affordable housing.

The subject parcel has undergone numerous timber harvest operations, with the latest conducted under a clear cut timber harvest plan (State Department of Forestry Timber Harvest Plan 93-442 HUM) during 1993 and 1994. A water well for domestic water use was developed on the parcel in the mid-1990s, and Big Lagoon Rancheria purchased the parcel in 2000. Under the proposed development, the parcel would be cleared and vegetation removed as necessary to allow for construction of an access driveway, three building pads, and concrete slab foundations. Electrical lines, connections to the existing water well, and septic systems would be installed, followed by construction of the three single family residences (**Exhibit 6**). Each of the proposed two-story residential buildings would be approximately 2,000 square feet in size and would not exceed 25 feet in height. The BIA estimates that construction would last approximately five months. Best management practices would be implemented during project construction to avoid adverse impacts to water quality, drainage, soils, and cultural resources.

The consistency determination included an analysis of three alternatives to the proposed project:

Alternative 1: No Action. *The no action alternative (refusal of BIA to approve the trust acquisition) would leave these lands in their undisturbed condition, and current zoning status limiting the Tribe to one home. This would not conform to the BIA and Big Lagoon Rancheria goals of providing economic self-sufficiency to the Tribe and its members.*

Alternative 2: Other Uses of Site. *This alternative would involve developing the site for other uses. However, the lands for the proposed project and all adjacent lands in the vicinity are zoned rural, agricultural, and residential housing. At this time, no other uses or proposals have been made. Other uses were considered, but not fully analyzed because they would not meet the Tribe's purpose and need.*

Alternative 3: Proposed Project Build in Another Location. *There are no other sites that are currently available for purchase, economically feasible, and located within ¼ mile of the Rancheria. Additionally, this site has already been purchased by the Tribal Government, and is zoned by the county for housing development. Alternative sites are frequently analyzed within environmental documentation in an effort to determine if another site is environmentally preferable for the proposed action. It would be difficult to find a site such as this, which will be on Indian land, near an easily accessible intersection like Hwy 101 and park Road. The Tribal membership will continue to grow, requiring the Tribal Government to continue planning on a proactive basis, and in this case by securing land to become tribal trust property for anticipated future housing development. Again, the site is zoned for housing which will result in minimal impacts with existing and planned uses for the area.*

The BIA states that the proposed site development plan is designed in a manner that preserves open space, avoids adverse impacts to scenic views, and does not change development patterns in the area. The BIA states that Big Lagoon Rancheria believes that the proposed development of up to three new homes on the five acre site is generally consistent with the pattern of existing homes and housing developments in the Big Lagoon area, but also notes that the proposed development would not be fully consistent with the current Humboldt County rural residential zoning designation for the site (one residence/five acres). Should the subject parcel be placed into federal trust status for Big Lagoon Rancheria, the parcel would no longer be subject to this zoning designation or to other state and local government land use and development regulatory controls.

B. Federal Agency's Consistency Determination. The BIA has determined the project consistent to the maximum extent practicable with the California Coastal Management Program (CCMP).

II. Staff Recommendation.

The staff recommends that the Commission adopt the following motion:

Motion: I move that the Commission **concur** with the BIA's consistency determination CD-077-06 that the project described therein is fully consistent, and thus is consistent to the maximum extent practicable with the enforceable policies of the California Coastal Management Program (CCMP).

Staff Recommendation:

Staff recommends a **NO** vote on the motion. Failure of this motion will result in an objection to the determination and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

Resolution to Object with Consistency Determination:

The Commission hereby **objects** to the consistency determination made by the BIA for the proposed project, finding that: (1) the project is not consistent with the California Coastal Management Program; and (2) the project is not consistent to the maximum extent practicable with the California Coastal Management Program.

III. Applicable Legal Authorities. Section 307 of the Coastal Zone Management Act (CZMA) provides in part:

(c)(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.

A. Procedure if the Commission finds that the proposed activity is inconsistent with the CCMP.

Section 930.43(a) of the federal consistency regulations (15 CFR § 930.43(a)) requires that, if the Commission's objection is based on a finding that the proposed activity is inconsistent with the CCMP, the Commission must identify measures, if they exist, that would bring the project into conformance with the CCMP. That section states that:

(a) In the event the State agency objects to the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the objection and supporting information. The State agency response shall describe: (1) How the proposed activity will be inconsistent with specific enforceable policies of the management program; and (2) The specific enforceable policies (including citations).(3) The State agency should also describe alternative measures (if they exist) which, if adopted by the Federal agency, would allow the activity to proceed in a manner

consistent to the maximum extent practicable with the enforceable policies of the management program. Failure to describe alternatives does not affect the validity of the State agency's objection.

As described below in the Development section of this report, the proposed project is not consistent to the maximum extent practicable with the CCMP. Pursuant to the requirements of Section 930.43 of the federal regulations implementing the CZMA, the Commission is responsible for identifying measures, if they exist, that would bring the project into compliance with the CCMP. The Commission believes that it would be possible to bring this project into compliance with the CCMP if the BIA implements the following measures:

1. New Residential Development. The Bureau of Indian Affairs will prepare a revised site plan for residential development on APN 517-281-004 that includes only one single family residence and an associated driveway, wastewater leach field, and utility connections. The residence will not exceed 25 feet in height, the no-development zone extending 165 feet from the watercourse at the western end of the parcel will be maintained, vegetation clearing for the development will be minimized, the existing forested strip along Highway 101 will be left undisturbed in order to screen the residence, and construction and post-construction BMPs will be implemented.

2. Agreement for Future Development. The Bureau of Indian Affairs will modify the project to include adoption by Big Lagoon Rancheria, and submittal to the Executive Director for his review and concurrence, Tribal Ordinances or other equivalent mechanisms which: (1) restrict future development on the subject parcel (APN 517-281-004) to one single family residence; (2) include provisions that the ordinances will not be altered without authorization by the Commission; and (3) include a waiver of sovereign immunity.

B. Consistent to the Maximum Extent Practicable.

Section 930.32 of the federal consistency regulations provides, in part, that:

(a)(1) The term “consistent to the maximum extent practicable” means fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

The Commission recognizes that the standard for approval of federal projects is that the activity must be “consistent to the maximum extent practicable” (CZMA Section 307(c)(1)). This standard allows a federal activity that is not fully consistent with the CCMP to proceed, if compliance with the CCMP is “prohibited [by] existing Federal law applicable to the Federal agency's operations.”¹ The BIA did not provide any documentation to support a maximum extent practicable argument in its consistency determination or in any subsequent documents. Therefore, there is no basis to conclude that existing law applicable to the Federal agency prohibits full consistency.

¹ 15 CFR Section 930.32.

C. Federal Agency Response to Commission Objection. Section C(a)(i) of Chapter 11 of the CCMP requires federal agencies to inform the Commission of their response to a Commission objection. This section provides:

If the Coastal Commission finds that the Federal activity or development project ... is not consistent with the management program, and the federal agency disagrees and decides to go forward with the action, it will be expected to (a) advise the Coastal Commission in writing that the action is consistent, to the maximum extent practicable, with the coastal management program, and (b) set forth in detail the reasons for its decision. In the event the Coastal Commission seriously disagrees with the Federal agency's consistency determination, it may request that the Secretary of Commerce seek to mediate the serious disagreement as provided by Section 307(h) of the CZMA, or it may seek judicial review of the dispute.

The federal consistency regulations reflect a similar obligation; 15 CFR §930.43 provides:

State agency objection. ...

(d) In the event of an objection, Federal and State agencies should use the remaining portion of the 90-day notice period (see §930.36(b)) to attempt to resolve their differences. If resolution has not been reached at the end of the 90-day period, Federal agencies should consider using the dispute resolution mechanisms of this part and postponing final federal action until the problems have been resolved. At the end of the 90-day period the Federal agency shall not proceed with the activity over a State agency's objection unless: (1) the Federal agency has concluded that under the "consistent to the maximum extent practicable" standard described in section 930.32 consistency with the enforceable policies of the management program is prohibited by existing law applicable to the Federal agency and the Federal agency has clearly described, in writing, to the State agency the legal impediments to full consistency (See §§930.32(a) and 930.39(a)), or (2) the Federal agency has concluded that its proposed action is fully consistent with the enforceable policies of the management program, though the State agency objects.

(e) If a Federal agency decides to proceed with a Federal agency activity that is objected to by a State agency, or to follow an alternative suggested by the State agency, the Federal agency shall notify the State agency of its decision to proceed before the project commences.

IV. Findings and Declarations:

The Commission finds and declares as follows:

A. Concentration of Development/Cumulative Impacts. The Coastal Act provides:

Section 30250(a). New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30253. New development shall:

...

(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

As described previously in this report, the BIA proposes to place the subject five-acre parcel into federal trust for the benefit of Big Lagoon Rancheria. Once placed into trust status, the parcel would no longer be subject to state or local government land use and development regulatory controls. After the subject parcel is placed into federal trust status, Big Lagoon Rancheria then proposes to construct three single family residential structures on the parcel, but would not subdivide the existing five-acre parcel into three new smaller legal parcels (**Exhibit 6**).

The five-acre parcel owned by Big Lagoon Rancheria is currently subject to the development policies of the North Coast Area Plan of the Humboldt County Local Coastal Program (LCP). The parcel has a land use designation of "Rural Residential" and is implemented through the "Rural Residential Agriculture – 5 Acres per Dwelling Unit" base zone designation. Because the Commission is reviewing the proposed trust transfer and development of three single family residences through a federal consistency determination, the standard of review is the Chapter 3 policies of the Coastal Act and not the Humboldt County LCP. However, because the Humboldt County LCP has been certified by the Commission and incorporated into the California Coastal Management Program, it can provide guidance to the Commission in applying Chapter 3 policies in light of local circumstances. The five acres per dwelling unit standard in the LCP for the rural residential lands in the Big Lagoon area is not the Commission's standard of review for the proposed project but will provide guidance to the Commission as it examines the project's consistency with Section 30250(a) of the Coastal Act.

The primary Coastal Act development issue that is raised by the proposed trust transfer and residential development is whether the construction of three single family residential structures on the subject five-acre parcel of land is consistent with the Section 30250(a) policy which states that:

. . . land divisions . . . outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

The Commission acknowledges that a formal and legal subdivision is not proposed by the BIA in this consistency determination. Three new legal parcels would not be created as a result of the proposed trust transfer. However, the proposed three residential structures that are also a part of this consistency determination raise equivalent development policy questions that would be addressed by the Commission were it evaluating a three-lot subdivision on the subject parcel. That is, the proposed three residential structures hold the potential to generate impacts on coastal resources similar to those potentially generated by a formal three-lot subdivision of the parcel. As a result, the Commission will analyze the proposed three single family residences for their consistency with Section 30250(a).

The coastal zone in the general vicinity of the subject parcel is rural in nature, except for several locations of residential development, and land use is primarily public recreation and timber management. The subject parcel is bordered on the on the west by four other privately-owned parcels ranging in size from 2.52 acres to 7.66 acres; two of these four parcels are improved with single family residential structures (**Exhibit 5**). To the southeast across Highway 101 is a 439-acre parcel owned by Simpson Resource Company, and to the north across Big Lagoon Park Road is an approximately 20-acre parcel owned by the California Department of Parks and Recreation (**Exhibit 7**). A small lot subdivision (the underlying land owned by the Big Lagoon Park Company) that pre-dates the Coastal Act and includes approximately 75 single family cabins and houses is located one-half mile to the west of the subject parcel (**Exhibit 7**). Other development in the immediate project area bordered by Highway 101, Big Lagoon, and the Pacific Ocean includes the Big Lagoon Elementary School, Big Lagoon County Park on the southern shore of Big Lagoon, public lands within Humboldt Lagoons and Patrick's Point State Parks, privately-owned parcels used primarily for timber production, and the Big Lagoon Rancheria (comprised of two parcels totaling 20 acres held in trust by the federal government for the Big Lagoon Rancheria, a four-acre-parcel to the northwest, and the subject five-acre parcel; the latter two parcels are owned fee-simple by the Rancheria)(**Exhibits 7 and 8**).

Except for the lots within the aforementioned Big Lagoon Park Company small lot subdivision and the four lots that border the five-acre subject parcel to the west, all of the remaining parcels of land in the project area bounded by the Pacific Ocean, Big Lagoon, and Highway 101 exceed five acres in size, except for the aforementioned four-acre parcel owned by Big Lagoon Rancheria. Unfortunately, the assessor parcel map database that the Commission uses to obtain parcel information does not include the parcel size for most of the parcels in the aforementioned project area. As a result, it is not possible to calculate the average (mean) parcel size for this area. Nevertheless, it is possible to review the assessor parcel maps and the several parcels

whose acreage is known, and generate acreage estimates for the balance of the parcels in the project area. The parcels immediately bordering the subject parcel are 2.5, 2.9, 7.0, 7.7, and 20 (est.) acres in size (**Exhibit 5**). A 439-acre parcel is located directly across Highway 101 from the subject parcel (**Exhibit 7**). Moving beyond these contiguous parcels, the parcel sizes in the project area (excluding the small lot subdivision) range between 9 and 75 acres, with the majority of parcels in the 10 to 20 acre range and two state park parcels exceeding 50 acres in size (**Exhibits 7 and 8**).

While acknowledging that no legal subdivision is proposed, the Commission notes that should three homes be constructed on the subject five-acre parcel after transfer to federal trust status, the equivalent average parcel size allocated to each residential structure would be 1.67 acres. This effective parcel size is significantly smaller than the aforementioned parcel sizes in the general project area. This proposed intensity of development on the subject parcel would be inconsistent with the existing level of development intensity in the surrounding area and in addition would establish a negative precedent for future development of privately-owned parcels in the Big Lagoon area. Therefore, the Commission finds that the proposed development of three single family residences on the five-acre parcel is not consistent with the concentration of development and cumulative impact policy of Section 30250(a) of the Coastal Act.

The secondary Coastal Act development issue raised by the proposed action is whether, under Section 30253, the trust transfer and subsequent construction of three residential structures adequately protects the unique characteristics of the Big Lagoon area due to it being a popular visitor destination point for recreational uses on county and state public lands. All or portions of Big Lagoon County Park, Humboldt Lagoons State Park, Harry Merlo State Recreation Area, and Patrick's Point State Park are located in the Big Lagoon area (**Exhibit 1**). Overnight camping, picnicking, sightseeing, hiking, boating, wildlife viewing, fishing, and beachcombing are popular activities in this area. The existing balance among public access and recreational activities on the extensive public lands in the area, timber management on private landholdings west of Highway 101, the small lot residential subdivision on Big Lagoon Park Company landholdings, and the residential development on Big Lagoon Rancheria would be altered by the proposed level of residential development density on the subject five-acre parcel. The proposed development density is out of character with adjacent parcel sizes that support residential development and other land uses such as timber management and public recreation. The proposed development density is also contrary to the Commission's historic actions in this part of Humboldt County – including the certification of the Local Coastal Program – to protect the existing rural nature of the landscape from increased development intensity, the outstanding opportunities for public access and recreation along the Highway 101 corridor and adjacent Pacific shoreline, and the unique character of the Big Lagoon recreation area. Therefore, the Commission finds that the proposed development of three single family residences on the five-acre parcel is not consistent with the development policy of Section 30253 of the Coastal Act.

The Commission must also examine the potential coastal zone effects of placing the subject parcel into federal trust status, and the subsequent elimination of state and local government land use and development regulatory controls. Currently, there is no absolute assurance that once the subject parcel is placed into federal trust status that the proposed residential housing project

would be implemented. In theory, any number of alternative projects could subsequently be proposed and developed for the site and these would be free of local and state regulatory development controls, including coastal development permitting under the Humboldt County LCP and any potential permit appeal authority the Commission itself might have for a project on the subject parcel. The Commission would retain its Coastal Zone Management Act federal consistency authority over the subject parcel once it is placed in federal trust status, but Commission review would only be triggered if a federal permit or authorization is needed for future proposed development on the parcel (e.g., the proposed three single family residences or another type of development). Should a potential project not trigger federal consistency review, the Commission's only means by which to review that activity for consistency with the Coastal Act would be through the federal consistency "re-opener" clause (CFR Section 930.45). The Commission has historically expressed concerns during its review of proposed transfers of parcels to federal trust status over the need to obtain assurances that any future development plans for parcels placed in trust will undergo federal consistency review to the extent provided for in the NOAA federal consistency regulations. (See CD-054-05, Bureau of Indian Affairs, placement of Martin Ranch parcel into trust for Elk Valley Rancheria, and development of Elk Valley Rancheria Resort and Casino, Del Norte County.)

For the reasons discussed above, the Commission determines that the proposed trust transfer is not consistent with the concentration of development and cumulative impact policies of Sections 30250(a) and 30253 of the Coastal Act, and that in order for the proposed trust transfer and residential development to be found consistent with these Coastal Act policies, the project would need to be modified as follows:

1. New Residential Development. The Bureau of Indian Affairs will prepare a revised site plan for residential development on APN 517-281-004 that includes only one single family residence and an associated driveway, wastewater leach field, and utility connections. The residence will not exceed 25 feet in height, the no-development zone extending 165 feet from the watercourse at the western end of the parcel will be maintained, vegetation clearing for the development will be minimized, the existing forested strip along Highway 101 will be left undisturbed in order to screen the residence, and construction and post-construction BMPs will be implemented.

2. Agreement for Future Development. The Bureau of Indian Affairs will modify the project to include adoption by Big Lagoon Rancheria, and submittal to the Executive Director for his review and concurrence, Tribal Ordinances or other equivalent mechanisms which: (1) restrict future development on the subject parcel (APN 517-281-004) to one single family residence; (2) include provisions that the ordinances will not be altered without authorization by the Commission; and (3) include a waiver of sovereign immunity.

Absent such modifications, the Commission could not find the proposed project consistent with the concentration of development and cumulative impact policies of the CCMP (Coastal Act Sections 30250(a) and 30253).

B. Water Quality and Environmentally Sensitive Habitat. The Coastal Act provides the following:

Section 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240.

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The *Environmental Assessment* for the proposed project analyzes the environmentally sensitive habitats present on the subject parcel:

. . . the site contains a class II watercourse on the southern portion of the site. During field surveys as a part of the Biological Assessment (BA), the watercourse was extremely shallow, intermittent, and supported no fish. However, it is possible that federally listed fish species could exist in the watercourse downstream from the project site.

. . .

The parcel is located in the Big Lagoon area in a coastal coniferous forest dominated by Sitka spruce and redwood. Many of the parcels in the Big Lagoon area are developed, but forested habitat is abundant. The parcel has been subject to numerous timber harvest operations with the latest being conducted under a clear cut timber harvest plan dated December 14, 1993. After the last timber harvest the site regenerated primarily with red alder, salal, and manzanita. However, a narrow strip of regenerated coniferous forest approximately 20 meters wide runs along the southeastern border adjacent to Highway 101. The forest surrounding the creek is older than other forested habitat on the property, but all of the forest patches are second growth and none are older than 100 years. The project as proposed will require removing much of the regenerating vegetation on the property. Specifically, the red alder/salal and red alder/manzanita regions of the property will be cleared. This vegetation is in an early stage of forest development; the canopy is less than four meters tall in the alder dominated areas and less than two meters tall in the shrub

dominated areas. Few conifer seedlings and saplings contribute to the canopy. This habitat is not sensitive but project implementation will permanently remove most of this habitat from the site. Land use in the region is rural, residential, and timber management. The project site was surveyed with a reconnaissance-level investigation of existing biological conditions on June 30, 2005, August 14, 2005, and November 30, 2005, by two professional biologists of the Cultural Resources Facility firm. Habitats for bald eagle, marbled murrelet, northern spotted owl, western yellow-billed cuckoo, and Pacific fisher were identified at the project site.

The *Biological Assessment* noted that while habitats for the aforementioned species were identified, field surveys failed to detect presence of these species. The report stated that noise generated from automobiles traveling along Highway 101 at the parcel's southeastern boundary is likely unattractive to these species. Moreover, only one remnant old-growth tree (Sitka spruce) is located on the site. The bald eagle, marbled murrelet, and northern spotted owl prefer large tracts of old growth forest; one old growth tree is not a viable habitat for these species. The western yellow-billed cuckoo prefers cottonwood and willow riparian areas; the watercourse on the western side of the subject parcel is dominated by salmonberry and salal and is unlikely to be suitable for this species. The narrow strip of dense Sitka spruce-redwood forest along the Highway 101 border could technically be considered habitat for the Pacific fisher but this is unlikely due to the immediately adjacent highway corridor and its complete lack of forest cover, which is essential to this species.

The *Environmental Assessment* next documents the measures to be implemented to minimize and avoid adverse impacts to water quality and environmentally sensitive habitats:

Big Lagoon Rancheria has designated a no development zone within 50 meters [165 feet] of the class II watercourse [Exhibit 6], and will implement erosion control measures during housing construction as recommended by the Biological Assessment.

Erosion control measures will include use of an engineer to further evaluate site clearing, soil removal, placement of fill, and site grading activities. Imported material will be reviewed for its potential sediment contribution. Other measures will include installation of erosion control mats, blankets, and silt screen or hay bales prior to initiation, during, and after construction activities, in order to capture any sediment before it reaches the watercourse. In the event that any sediment is accidentally deposited into the watercourse, it will be immediately removed. Construction activities will occur during the most appropriate seasonal timeframes to reduce potential impacts. Impervious surfaces will be minimized to the greatest extent feasible. Parking areas will divert concentrated runoff into vegetated swales or cobble beds.

...

Due to the past disturbance history and the small scope of impacts at the project site, disturbance from this project will unlikely result in a trend toward special status listing or loss of viability for special habitats and species of special concern. Although special

habitats and species of special concern do exist in the region, these habitats and species are unlikely to be impacted by project implementation.

The *Environmental Assessment* also notes that Big Lagoon Rancheria obtained a preliminary evaluation of the suitability of onsite wastewater treatment for the proposed project. The report (Appendix D of the *Environmental Assessment*) concluded that:

. . . space on this site [is] sufficient for proposed construction of three residences as shown on the site map and an onsite wastewater treatment system (OWTS)(See Appendix D). The on-site soil is suitable to provide necessary percolation rate, wastewater disposal will occur away from water sources and sensitive habitats and in an area with less than a 30% slope, therefore, there will be no significant impacts to water resources.

Appendix D further notes that the site investigation and testing for onsite wastewater treatment suitability was performed under current Humboldt County Division of Environmental Health sewage disposal regulations and State of California North Coast Regional Water Quality Control Board Basin Plan regulations.

The proposed development of three single family residences would occur on a five acre parcel of land that was clear cut during a 1993-1994 timber harvest operation. An intermittent watercourse at the western side of the parcel was not disturbed during the timber harvest and second-growth forest cover remains at this location, as well as within an approximately 65-foot-wide strip along the parcel's border with Highway 101 to the southeast. While both of these areas would remain undisturbed by the proposed development, the project would entail vegetation removal within the central portion of the parcel for construction of a driveway, building pads, and a wastewater disposal field. This would not eliminate any environmentally sensitive habitat but rather red alder, salal, and manzanita shrub cover that developed subsequent to the mid-1990s clear cut operation. The project includes avoidance and mitigation measures to ensure that the intermittent watercourse on the parcel is protected from sedimentation damage during and after construction. In conclusion, the Commission finds that the proposed project can be developed in a manner which would avoid environmentally sensitive habitat and not adversely affect water quality, and is therefore consistent with the water quality and environmentally sensitive habitat policies of the CCMP (Sections 30231 and 30240 of the Coastal Act).

C. Scenic and Visual Resources. Section 30251 of the Coastal Act provides:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The *Environmental Assessment* includes a section that describes the scenic and visual resources at the subject parcel located on the west side of Highway 101:

The aesthetic character in the vicinity of the project is shaped by Highway 101 on one side of the property separated by a 15-20 foot high earth berm containing scattered young growth timber along the entire length of the site bordering the highway. The northern border of the project site includes Big Lagoon Park Road, with the road separating the site from nearby property containing young growth timber . . . The site is located within the hilly coastal floor of the Big Lagoon area and has views of coastal mountains (some sites of previously and more recent harvested timber land areas) to the north and east of the project site.

The *Environmental Assessment* states in a different section that the aforementioned earth berm along the parcel's southeastern border adjacent to Highway 101, and which contains scattered young growth timber approaching 50 feet in height, is approximately 65 feet wide. The berm and band of timber will not be disturbed by the proposed development and will effectively screen the proposed development on the parcel from Highway 101 (**Exhibit 6**).

The *Environmental Assessment* next examines the potential impacts on visual resources from the proposed action:

There are scenic views when traveling north on Highway 101. There will be no impacts as the view is to the east of the proposed project. In addition, the scenic views are largely above the level of the proposed structures, which will be no more than two stories tall. The siding and roofing material for the structures will be constructed and finished in such a manner to minimize glare. Outdoor lighting shall be directed in a downward direction and light rays shall not exceed the property boundaries. Coastal appropriate plant materials shall be employed for landscaping. Exterior design will blend into the natural surroundings to the extent practicable. Sighting and design of the proposed homes shall comply with the standards and conditions established within the Humboldt County North Coast Area Plan, Section 3.42C and D. Therefore, visual and aesthetic impacts are not considered significant.

Highway 101 and Big Lagoon Park Road are the primary coastal access ways in the immediate vicinity of the subject parcel, and the views from these public right-of-ways at and adjacent to this location are of the mixed spruce/redwood forest that borders both roadways. The proposed clearing of vegetation for a driveway, building pads, and wastewater leach field would occur within the center of the parcel, leaving the perimeter vegetation intact as a screen from public roadways. The subject parcel is not visible from other nearby public lands. In conclusion, the Commission finds that the proposed project can be developed in a manner which would not adversely affect scenic views from the adjacent section of Highway 101 and is consistent with the scenic and visual resource policy of the CCMP (Section 30251 of the Coastal Act).

D. Cultural Resources. Section 30244 of the Coastal Act provides:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The project area is located within the Yurok Indian's traditional territory. The BIA's *Environmental Assessment* for the proposed action states that prior to 1850, the Yurok inhabited permanent villages along the Pacific Coast from Crescent City in the north to Trinidad in the south, as well as along the lower 45 miles of the Klamath River, and that one such village, *oketey*, was located near the project area. The *Environmental Assessment* also states that two cultural resources surveys were previously conducted on the project site: in 1992 prior to a 23-acre timber harvest project in 1993-1994 that included the subject five-acre parcel, and a 1995 re-survey of the project site after completion of the timber project. A portion of one archaeological site (CA-HUM-932A) with both historic Euroamerican and Native American components was recorded by both surveys.

The *Environmental Assessment* reports that the Big Lagoon Rancheria contracted for a third cultural resource survey of the site. This work included a formal records search, archival research and interviews, consultation with Native Americans, and an extended archaeological survey involving surface survey, subsurface testing, and analysis of artifacts collected from a historic period refuse dump associated with a former house site (CA-HUM-932H) at the edge of the study parcel. This third survey re-identified and re-recorded a portion of the one previously recorded historic period archaeological site (CA-HUM-932A) within the project area, stated that CA-HUM-932H was ineligible for inclusion in the National Register of Historic Places, and concluded that "there are no cultural resource concerns for the subject parcel."

The *Environmental Assessment* also provides that:

In the event that any additional cultural materials are inadvertently discovered during construction, all ground-disturbing activities within the [project site] shall be halted until a qualified archaeologist has had the opportunity to evaluate the significance of the resource(s). All findings shall be documented and presented to the BIA and the Tribe. The BIA shall fulfill the requirements for post-review discoveries pursuant to 36 CFR 800.13(d). Significant findings shall be documented and presented to the BIA and the Tribe for consultation with SHPO [State Historic Preservation Officer]. The matter shall be resolved to the satisfaction of all parties.

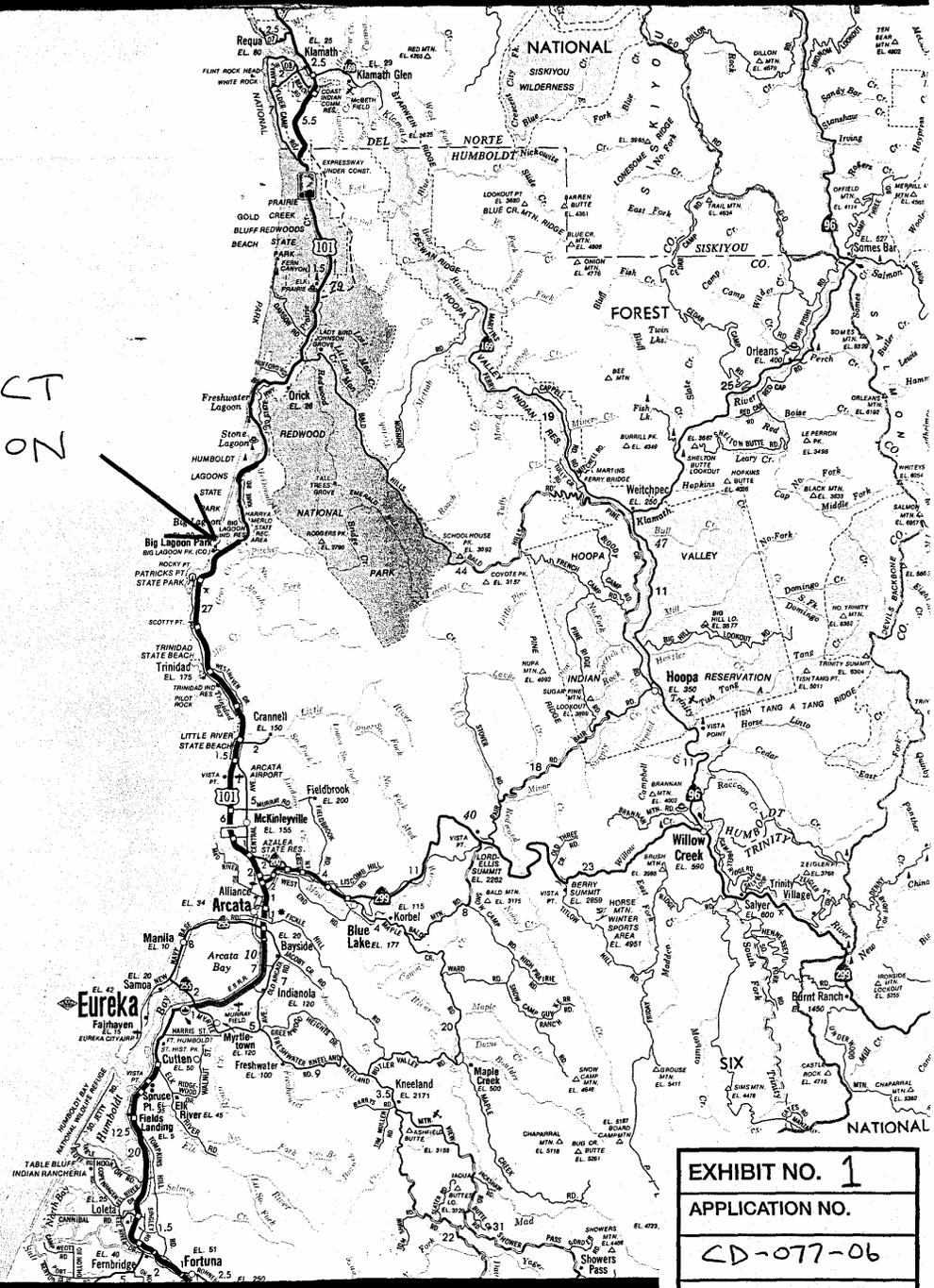
The Commission concurs with the BIA that the subject parcel does not contain significant cultural resources and that protections for an unanticipated discovery of such resources would be implemented prior to the start of site construction. Therefore, the Commission finds that the proposed project will not adversely affect cultural resources and is consistent with the cultural resource policy of the CCMP (Section 30244 of the Coastal Act).

SUBSTANTIVE FILE DOCUMENTS:

1. CD-054-05 (Bureau of Indian Affairs, placement of Martin Ranch parcel into trust for Elk Valley Rancheria, and development of Elk Valley Rancheria Resort and Casino, Del Norte County)
2. ND-037-02 and ND-069-02 (Bureau of Indian Affairs, placement of six parcels near Requa into trust status for the Yurok Tribe, Del Norte County)
3. ND-064-00 (Bureau of Indian Affairs, placement of four parcels into trust status for the Smith River Rancheria, Del Norte County)
4. ND-035-00 (Bureau of Indian Affairs, placement of five parcels into trust status for the Smith River Rancheria, Del Norte County)
5. ND-060-99 (Bureau of Indian Affairs, placement of one parcel into trust status for the Smith River Rancheria, Del Norte County)
6. Humboldt County Local Coastal Program, North Coast Area Plan (June 1990)
7. Environmental Assessment, Big Lagoon 5 Acre Fee to Trust Single Family Homes, Highway 101 and Park Road, Big Lagoon Rancheria, August 2006

C
PROJECT
LOCATION

F
C
I
A
R



General Location Map for Big Lagoon Rancheria

A.P. No: 517-281-004

Lot 4
Big Lagoon Park Road
Big Lagoon, California

Project Location

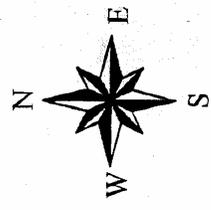
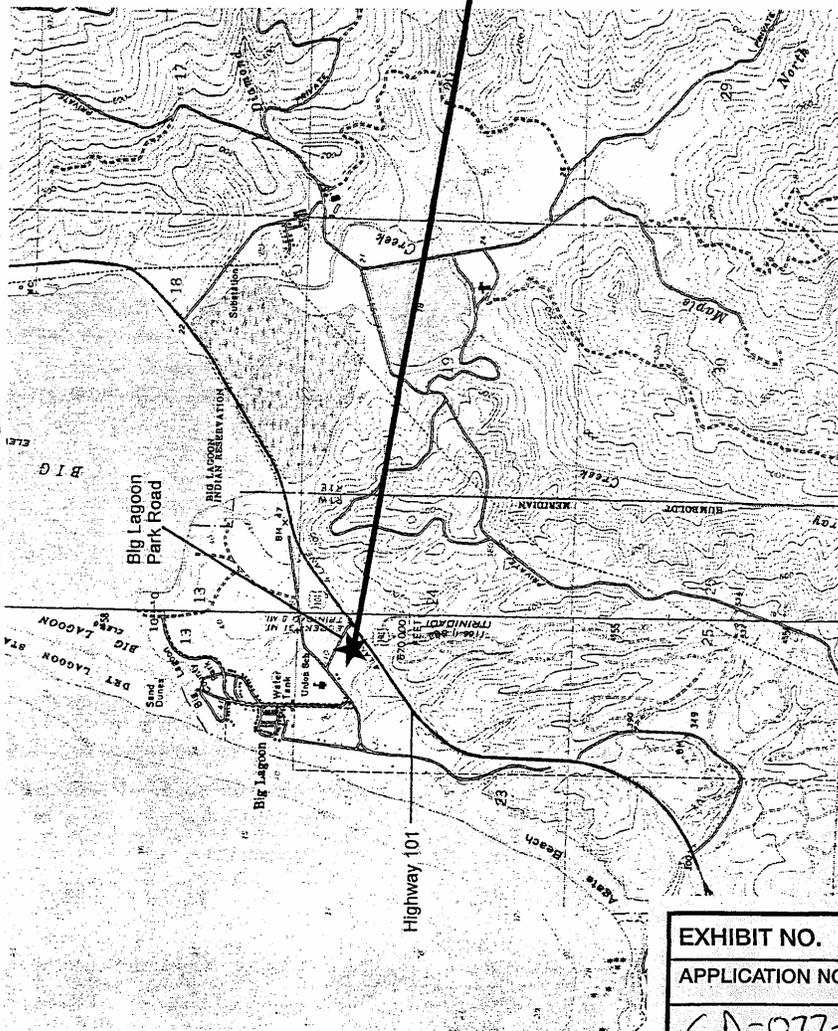


Figure 1

EXHIBIT NO. 2
APPLICATION NO.
CD-077-06

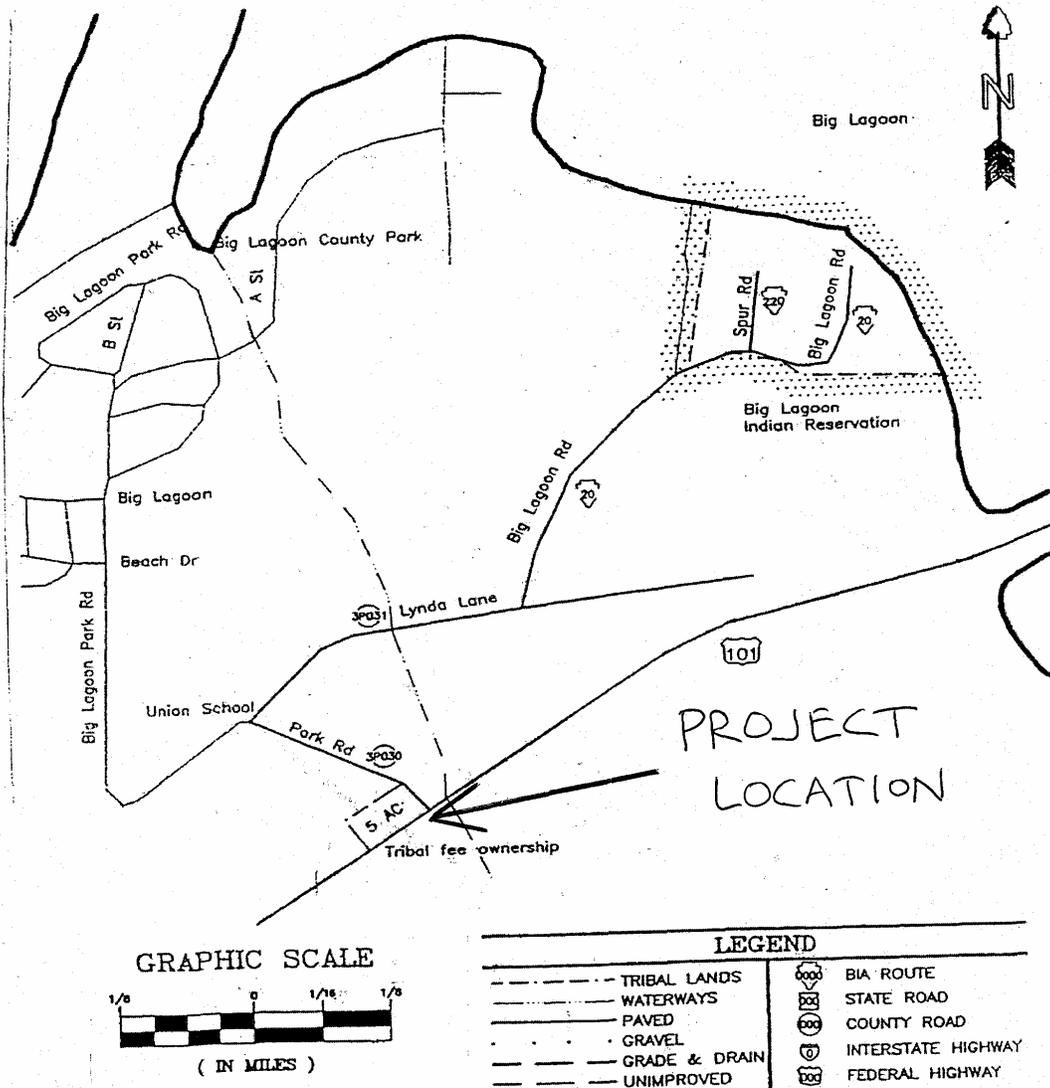
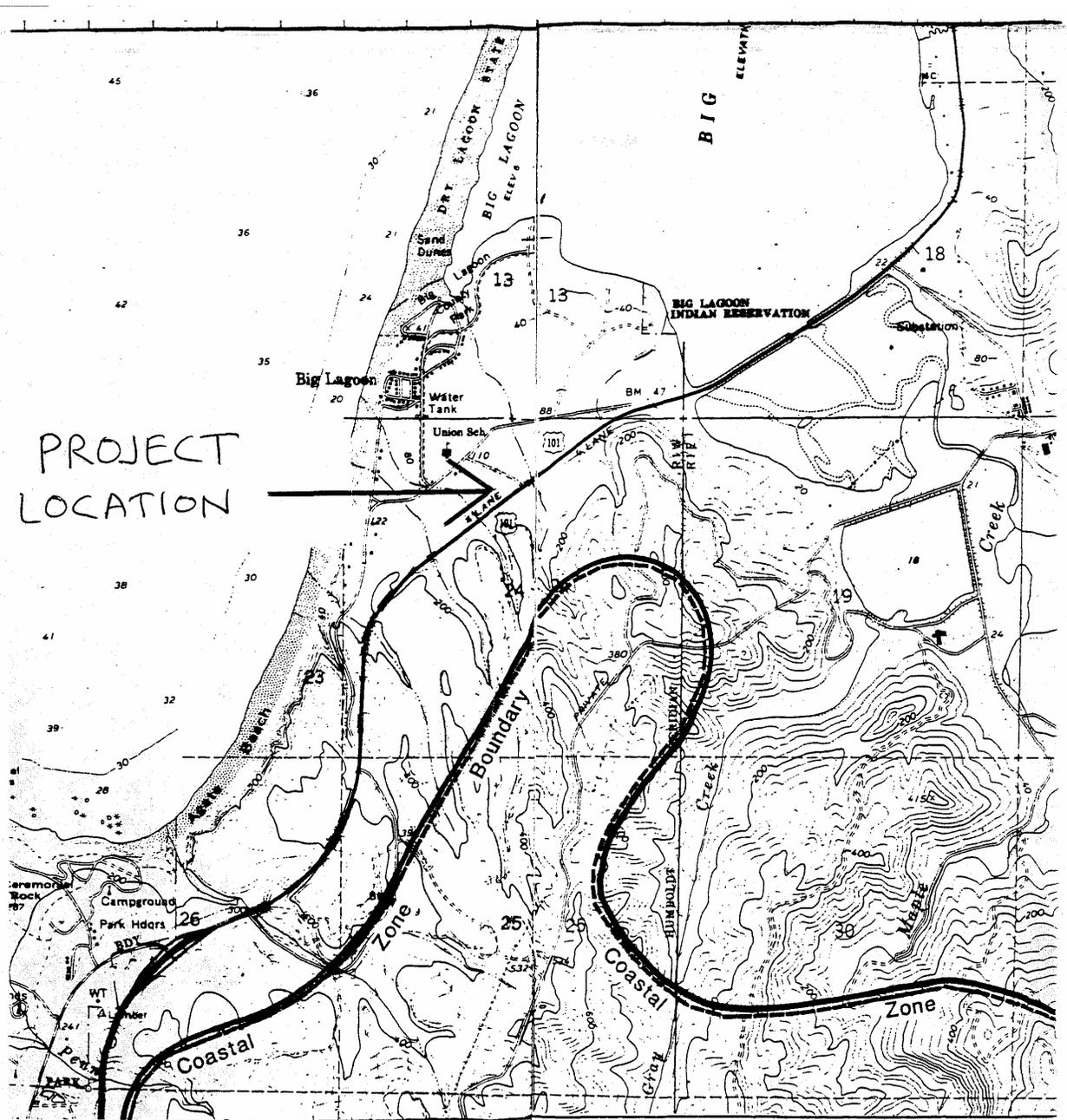


Figure 2. Project Location Map

PROJECT ACCESS ROADS

EXHIBIT NO. 3
APPLICATION NO.
CD-077-06



PROJECT
LOCATION

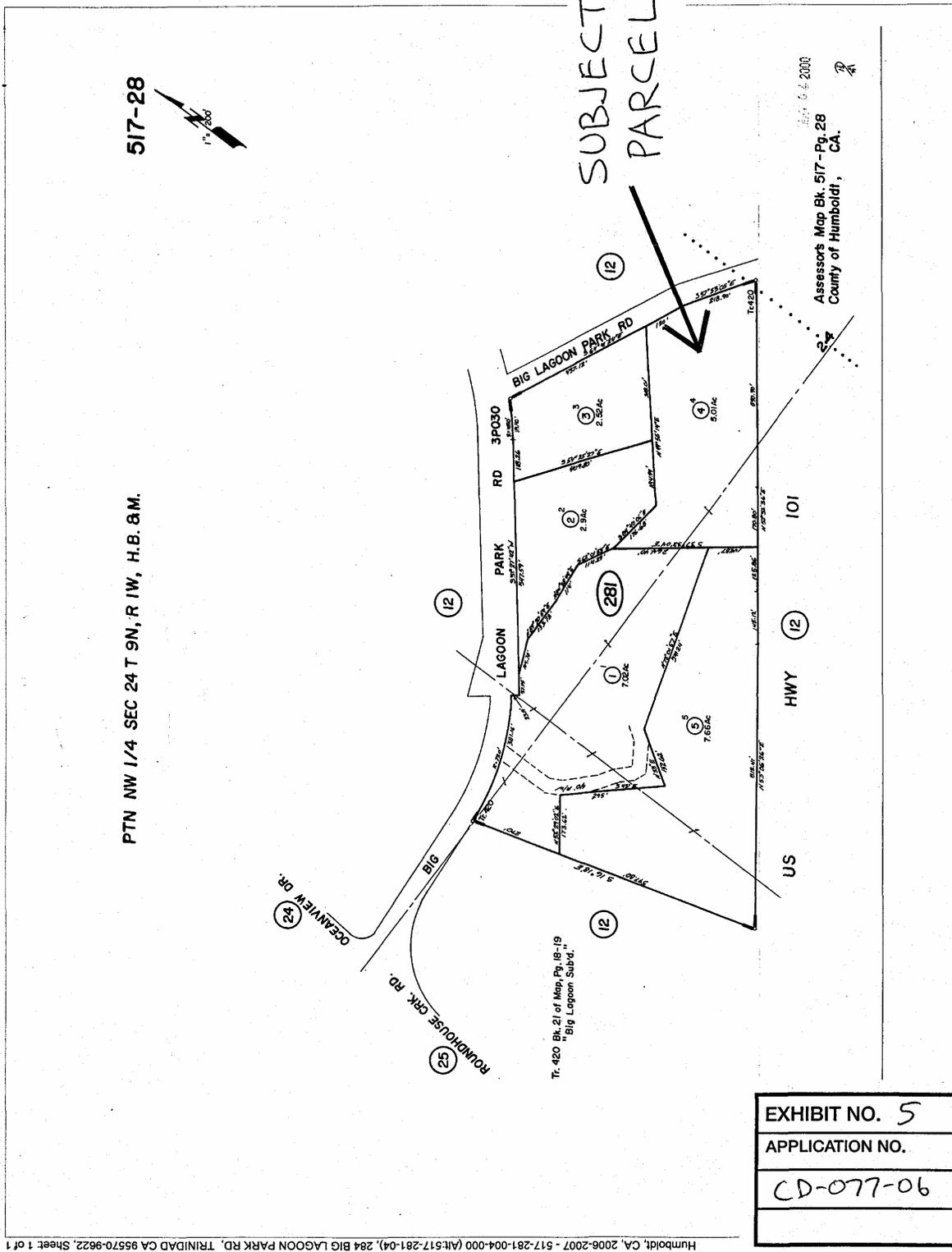


California Coastal Commission

Sheet 9 of 56

County of Humboldt

EXHIBIT NO. 4
APPLICATION NO.
CD-077-06



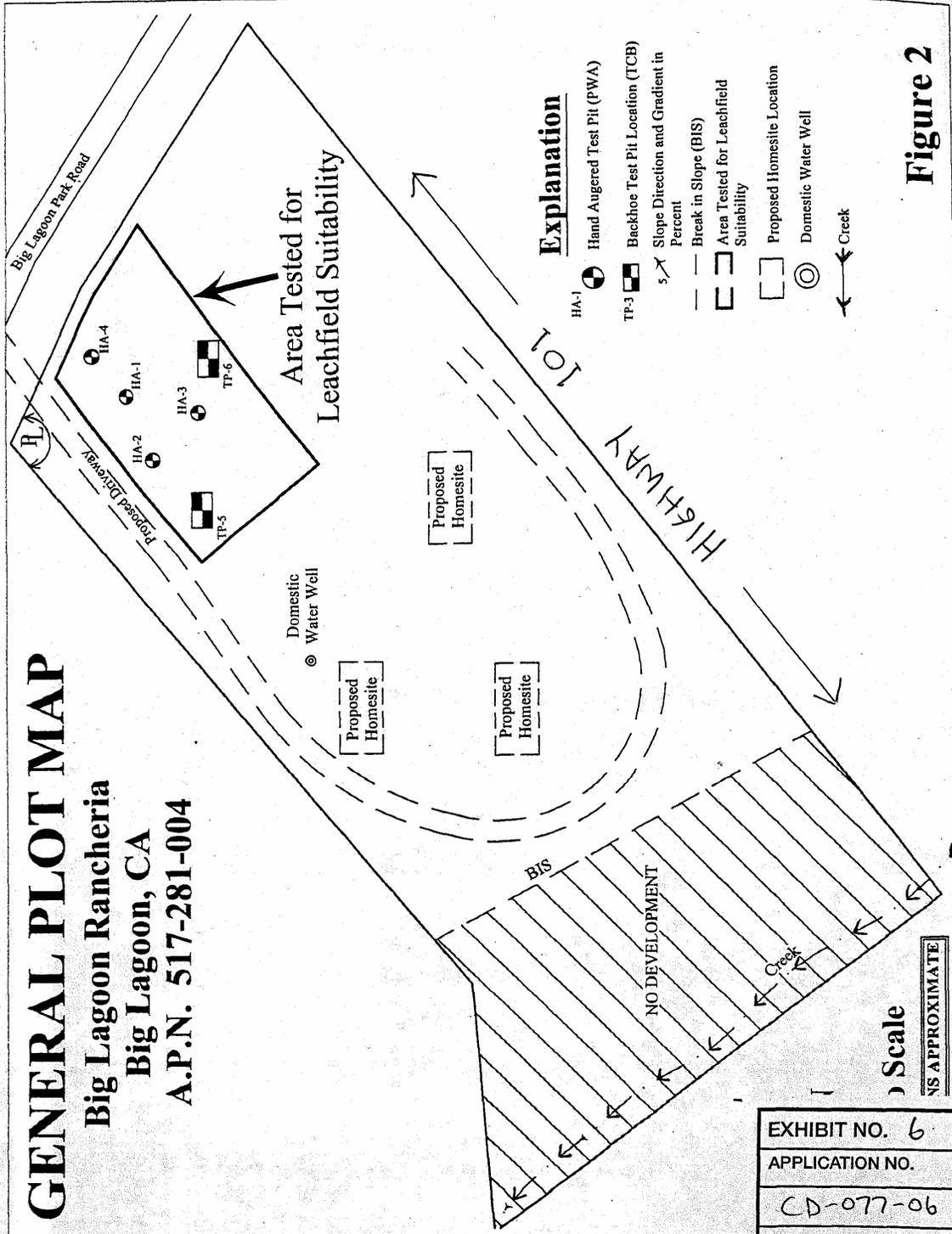


Figure 2

517-121
T.C.A. 123-00
1" = 800'
REV. 3/4/58 H.T.
8/31/62

SEE EXHIBIT 8
FOR CONTINUATION
OF PARCEL IDENTIFICATION
IN THIS ADJACENT AREA
TO THE NORTH.

Parcel	Owner
4	Big Lagoon School District
5	Calif. Dept. Parks & Rec.
8	Private
9	Private; subdivided; see Exhibit 5 of staff report for parcels
10	Big Lagoon Park Company
11	Calif. Dept. Parks & Rec.
12	Simpson Resource Company
13	Calif. Dept. Parks & Rec.

Small Lot Subdivision Area

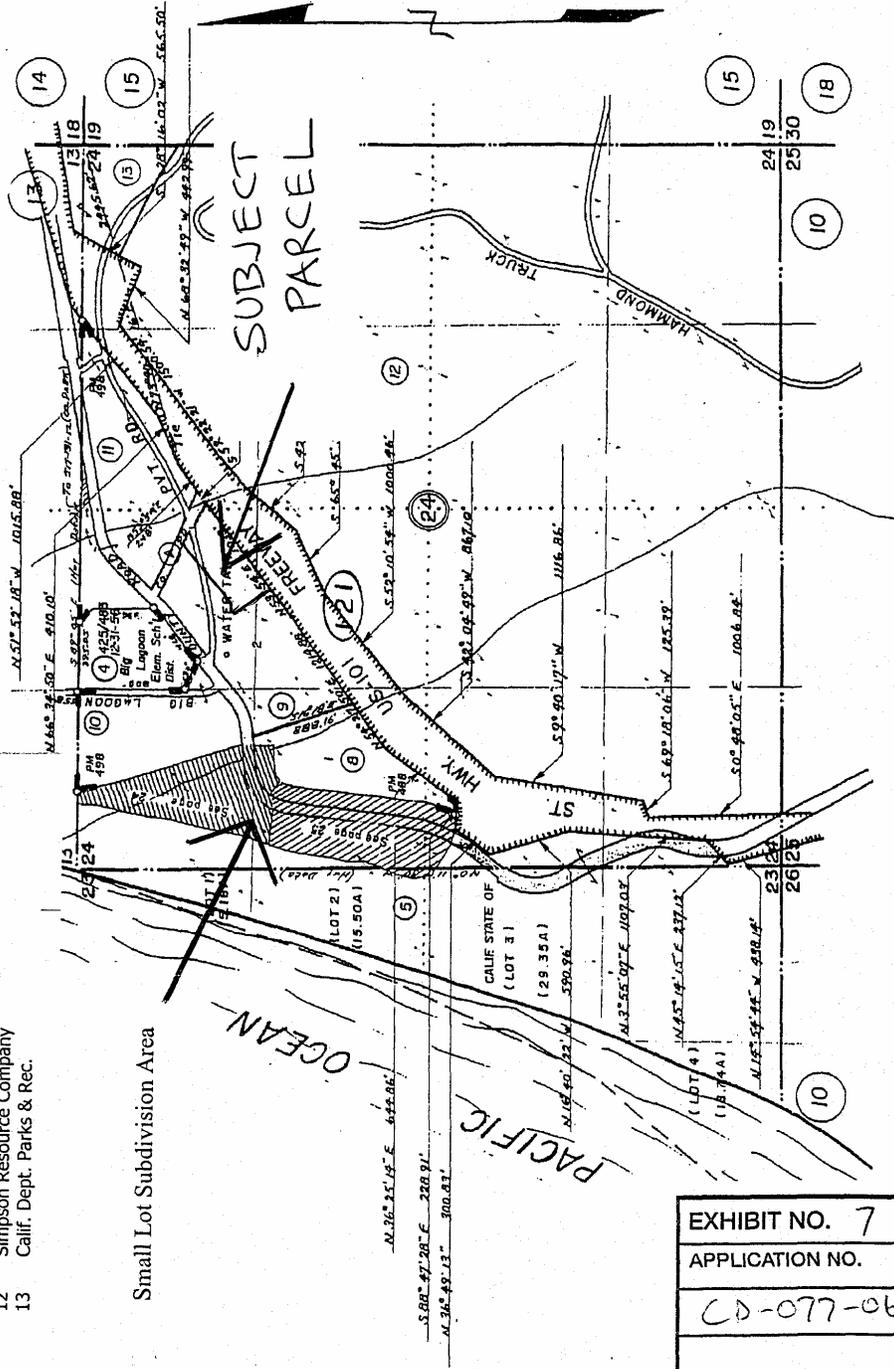
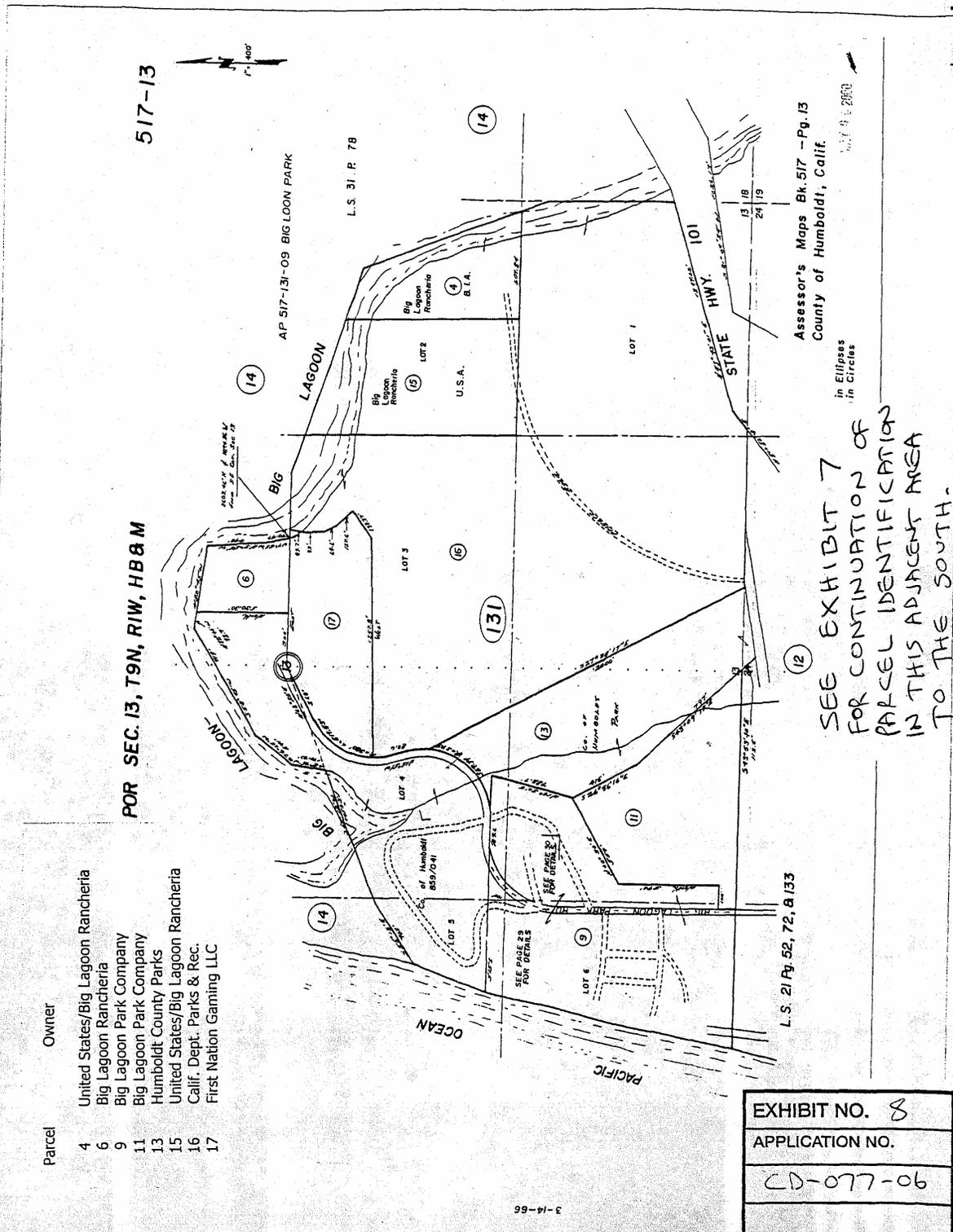


EXHIBIT NO. 7
APPLICATION NO.
CD-077-06

H



Parcel	Owner
4	United States/Big Lagoon Rancheria
6	Big Lagoon Rancheria
9	Big Lagoon Park Company
11	Big Lagoon Park Company
13	Humboldt County Parks
15	United States/Big Lagoon Rancheria
16	Calif. Dept. Parks & Rec.
17	First Nation Gaming LLC

POR SEC. 13, T9N, R1W, HB&M

517-13

EXHIBIT NO. 8
APPLICATION NO.
CD-077-06

Assessor's Maps Bk. 517 - Pg. 13
County of Humboldt, Calif.

SEE EXHIBIT 7
FOR CONTINUATION OF
PARCEL IDENTIFICATION
IN THIS ADJACENT AREA
TO THE SOUTH.